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Mohd. Saddik vs. M.A.C.T., Udaipur & Ors.
(S.B.C.WRIT PET.NO.7421/07)

Dated :- 11.12.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Jagdish Vyas , for the petitioner.
Mr. R.S.Mankad, for the respondents.

BY THE COURT:-

This writ petition is directed against order dated 22.5.07 passed by the Additional District Judge(F.T.) No.5(Motor Accident Claims Tribunal), Udaipur, in claim case no.130/06 , whereby the applications preferred by the petitioner- non claimant for permitting him to cross examine the witnesses examined on behalf of the respondents claimants and for permitting the petitioner -non claimant to lead the evidence , have been rejected.

The respondents claimants preferred a claim petition u/s 66 of the Motor Vehicles Act,1988 inter alia against the petitioner-non claimant said to be owner of the vehicle,before the Motor Accident Claims Tribunal, Udaipur, claiming compensation on account of death of one Shri Bhanwar Lal in an accident occurred on 28.3.02 at Dabok,Udaipur.The evidence of the claimant was completed on 24.8.06 and the matter was posted for non claimants' evidence on 21.9.06. In the meantime, in pursuance of an order dated 24.8.06 passed by the

High Court,the aforesaid claim case was ordered to be transferred from M.A.C.T., Udaipur to A.D.J.(F.T.), No.6 (M.A.C.T.), Udaipur. Consequently, the Judge, M.A.C.T.,Udaipur vide order dated 12.09.06 directed the parties to appear before the Court of A.D.J.(F.T.) No.6,(M.A.C.T.), Udaipur on 21.09.06 . On the aforesaid date of hearing , the time was sought on behalf of the non claimants to produce the evidence. Accordingly, the matter was adjourned to 2.11.06. On the said date, non claimant no.1 Mr.Raju got himself examined as witness and closed his evidence. Nobody was present on behalf of the petitioner-non claimant , however, he was not proceeded ex parte but, the matter was fixed for final hearing on 30.11.06 .

In the meantime, on 2.11.06, an application was preferred on behalf of the petitioner-non claimant under Order 1 Rule 10 (2) read with Section 151 C.P.C. for impleading subsequent transferee of the vehicle as party non claimant in the matter. After hearing the parties, the said application was rejected by the learned Tribunal vide order dated 22.2.07 and the matter was adjourned to 6.4.07 for final hearing. On 18.5.07, the petitioner- non claimant preferred two applications , one for permitting him to cross examine the witnesses produced on behalf of the claimants and another for permitting him to produce himself and one Shri Nasir Sabri as witnesses. Both the applications preferred by the petitioner claimant have been

rejected by the learned Tribunal vide order impugned dated 22.5.07. Hence, this petition.

At the outset, the learned counsel appearing for the petitioner submitted that he does not want to press his prayer relating to application (Annex.4) filed before the learned Tribunal seeking an opportunity to cross examine the witnesses produced on behalf of the respondent claimants and non claimant Shri Raju. However, the learned counsel contended that the learned Tribunal has seriously erred in rejecting the application preferred by the petitioner non claimant seeking an opportunity to produce the witnesses on the ground that the evidence of the petitioners non claimants has already been closed on 2.11.06. The learned counsel urged that as a matter of fact, the evidence of the petitioner non claimant was never closed by the learned Tribunal. While drawing attention of this Court to order sheet dated 2.11.06 , the learned counsel submitted that the matter was posted for final arguments by just recording absence of the petitioner non claimant, neither the evidence of the petitioner non claimant was closed nor any order proceeding ex parte was passed against him by the Tribunal. The learned counsel submitted that from 2.11.06 to 22.2.07, the matter remained pending for disposal of the application preferred by the petitioner under Order 1 Rule 10(2) C.P.C., thus, from bare perusal of the order sheet placed on record , it is manifestly clear that the

learned Tribunal has not afforded adequate opportunity to the petitioner non claimant for producing his witnesses. The learned counsel submitted that the petitioner non claimant has no intention to prolong the proceedings and he is ready to complete his evidence within such time as may be fixed by this Court.

Per contra, the learned counsel appearing on behalf of the respondents claimants submitted that the petitioner non claimant is guilty of adopting the delaying tactics. The evidence of the petitioner non claimant was closed by the learned Tribunal on 2.11.06, however, no application was preferred by him for reopening his evidence , instead an application was preferred for impleading the subsequent transferee of the vehicle involved in the accident as party respondent which was rejected by the learned Tribunal vide order dated 6.4.07. Even thereafter, the aforesaid applications were preferred by the petitioner non claimant after a lapse of more than one month. Accordingly,the learned counsel urged that the order passed by the learned Tribunal does not suffer from any infirmity or illegality and the petitioner non claimant is not entitled for the relief claimed .

I have considered the rival submissions and perused the documents placed on record.

It is to be noticed that the issues in the matter were framed by the learned Tribunal on 19.11.04 and thereafter, the matter was adjourned on several occasions for the claimant

evidence. Since, the claimant failed to produce the evidence, therefore, while giving further opportunity, the cost was imposed on the claimant on two occasions. From the perusal of the order sheet , it is manifestly clear that the claimant took about one year and nine months in completing his evidence. On 24.8.06, the claimants completed his evidence and the matter was adjourned to 21.9.06 for non claimant evidence. On the said date , the time was sought on behalf of the non-claimants for producing their evidence , accordingly, the matter was adjourned to 2.11.06. The non claimant no.1 Shri Raju completed his evidence on the said date and thereafter, the matter was straight away posted for final hearing on 30.11.06 . It is true that nobody was present on behalf of the petitioner non claimant but, neither his evidence was ordered to be closed nor he was proceeded ex parte. It is correct that the petitioner non claimant has not preferred an application for permitting him to lead the evidence immediately after passing of the order dated 2.11.06 but then,this fact cannot be ignored that during the intervening period, the matter remained pending for consideration of his application under Order 1 Rule 10(2) C.P.C. Thus, in the facts and circumstances of the case, in my considered opinion, it will be unjust to deny an opportunity to the petitioner non claimant to lead his evidence.

In the result, the writ petition is partly allowed. Order

passed by the learned Tribunal dated 22.5.07 rejecting the application preferred by the petitioner seeking permission to produce himself and Shri Nasir Sabri as witnesses is set aside. The application of the petitioner non claimant seeking an opportunity to lead evidence is allowed. The petitioner non claimant is directed to produce his all witnesses for examination before the Tribunal on 8th January, 2008. However, if on account of any unavoidable circumstances, the Tribunal fails to examine the witnesses produced on behalf of the petitioner non claimant on the date fixed, the petitioner non claimant shall produce the witnesses on the date to be fixed by the learned Tribunal. The learned Tribunal is directed to decide the claim petition expeditiously. No order as to costs.

(SANGEET LODHA),J.